

EXHIBIT 1

UNITED STATES DISTRICT COURT.

DISTRICT OF CONNECTICUT

INFOTELECOM, LLC)
Plaintiff.) NO: 3:11cv739(JCH)
vs.) July 12, 2011
ILLINOIS BELL TELEPHONE) 10:00 a.m.
COMPANY,)
Defendant.)

915 Lafayette Boulevard
Bridgeport, Connecticut

HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For the Plaintiff : David A. Slossberg
Hurwitz Sagarin Slossberg &
Knuff LLC
147 North Broad St., PO Box
112
Milford, CT 06460-0112

Alexander E Gertsburg
Infotelecom, LLC
1228 Euclid Avenue, Suite
370
Cleveland, OH 44115

G David Carter
Arent Fox , PLLC-DC
1050 Connecticut Ave., NW
Washington, DC 20036-5339

-- continued --

For The Defendant : Dennis G. Friedman
Mayer Brown LLP - IL
71 South Wacker Dr.
Chicago, IL 60606

Edward J. Fitzgerald
Southern New England
Telephone Co
310 Orange St., 8th Fl.
New Haven, CT 06510

Court Reporter : Terri Fidanza, RPR

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transcript produced by computer.

1 understand we're taking this through the allegation of
2 the complaint so I think there would be Rule 11 problems
3 with an allegation of a secret deal. The second is
4 there's no private right of action in federal court for
5 that action. The alleged violation unless there were
6 some kind of claim for damages in which case there would
7 be a right of action under Section 207 of the
8 Communications Act but we don't have that here.

9 THE COURT: I understand you to be suggesting
10 that even if such a cause of action lay here or had been
11 pled, that it couldn't be the basis for the equitable
12 relief sought by the plaintiff?

13 MR. FRIEDMAN: Correct.

14 THE COURT: I was a bit surprised I guess I will
15 say that you did not, you or your client in their
16 briefing, did not rely more on the Trinko decision at the
17 Second Circuit. And I guess my first question to you is
18 to tell me if I'm wrong that when a case is decided by a
19 circuit and five issues are addressed by that circuit
20 opinion, two of those go up on a petition for cert, the
21 court grants only one of the two questions posed and does
22 its thing with respect to that one issue. In this case,
23 it was an antitrust issue of the relationship between the
24 Sherman Act and the FTCA but it makes no discussion and
25 no mention of the opinion in the circuit below on matters

1 that I would say address the FTCA itself sort of. I
2 can't say it is separate and apart from the antitrust
3 issue but it was about the FTCA. Isn't that Second
4 Circuit opinion in regard to the matter left unchanged by
5 the Supreme Court cert still controlling law.

6 MR. FRIEDMAN: It is still controlling law, your
7 Honor. I don't have a good explanation for why we didn't
8 use it. I would attribute it to oversight.

9 THE COURT: Maybe it isn't as helpful as I think
10 it is.

11 MR. FRIEDMAN: I would add on the question of
12 whether a contract claim of the sort that Infotelecom
13 alleges here, arises under 1331, frankly -- well, of
14 course, if we thought we had a good Second Circuit
15 decision on that, we would cite it but the law is so
16 clear on that --

17 THE COURT: Okay. I guess I thought the
18 language in Trinko that said the plaintiff's claim in
19 this case "Only described conduct by the defendant that
20 would violate the Intercommunication Agreement" and
21 "therefore, the plaintiff had no cause of action pursuant
22 to Sections 206 and 207 of the Communications Act."

23 MR. FRIEDMAN: Well.

24 THE COURT: Maybe it is not so directly on
25 point. I do think the language in it suggested to me the

1 Second Circuit's view.

2 MR. FRIEDMAN: Infotelecom hasn't suggested that
3 the court has jurisdiction over the contract claim
4 pursuant to 207, right? Infotelecom said it is an
5 arising under question and we have dealt with that.

6 THE COURT: All right.

7 MR. FRIEDMAN: If I may, your Honor, let me add
8 to that as my memory is being refreshed, Infotelecom does
9 not allege -- with respect to our treatment of
10 Infotelecom under the Interconnection Agreement,
11 Infotelecom does not allege that's a violation of the 96
12 Act.

13 THE COURT: Say that again.

14 MR. FRIEDMAN: I may be missing the import of
15 your question. With respect to the contract question in
16 this case, the meaning of the --

17 THE COURT: Delta.

18 MR. FRIEDMAN: The Delta and so forth. With
19 respect to that issue, Infotelecom does not suggest that
20 this court has jurisdiction under 207.

21 THE COURT: That's correct.

22 MR. FRIEDMAN: Nor does it suggest that there's
23 a -- that there's a violation of the act with respect to
24 the contract. The only violation of the act alleged in
25 the complaint is a violation of 252I.

1 have to do in a preliminary injunction hearing in front
2 of four different agencies.

3 MR. FRIEDMAN: In reality. There's a legal
4 answer to that, then there's a reality. The reality is
5 that AT&T appears before these state utility commissions
6 all the time. Constantly has multiple matters pending
7 there and is concerned about its relation with these
8 commissions and if, for example, an ALJ in the exercise
9 of what he or she thought was prudent administration,
10 suggested to AT&T that it might be a good idea to not do
11 anything drastic until the case had a chance to be heard,
12 you can imagine the rest of the thought.

13 THE COURT: All right. I don't know if you want
14 to add anything. I don't have anything further right
15 now. I may after I hear from plaintiff's counsel, I may
16 be back to you with some more questions.

17 MR. FRIEDMAN: Fine. Thank you, your Honor.

18 THE COURT: Is it Attorney Carter?

19 MR. CARTER: Yes, ma'am.

20 THE COURT: I would like to start with Trinko
21 because if you heard my question to Attorney Friedman, I
22 guess my first question would be would it be your view
23 that the Second Circuit's discussion of local exchange
24 carriers and entering into Interconnect Agreements is not
25 good law because the Supreme Court chose to address one

1 aspect of the continuum?

2 MR. CARTER: Respectfully, your Honor, because
3 the issue wasn't brief, I haven't looked at the issue in
4 great detail but I would say as Mr. Friedman spoke
5 earlier I think Trinko can be distinguished on the fact
6 that it speaks to the issue of jurisdiction under 206 and
7 207 with regard to our claim under for the
8 Interconnection Agreement issue under 1331. I would have
9 to look more closely at that issue to address it in more
10 detail but I'm not -- I wouldn't disagree with the
11 general proposition if the Supreme Court didn't grant
12 cert on the issue, that the Second Circuit opinion would
13 remain.

14 THE COURT: I'm just struck in Trinko and maybe
15 your bad luck that I just was on a panel about antitrust
16 law and Trinko was a really big subject that we talked
17 about. But the circuit in this case held after an
18 incumbent local exchange fulfills the duties under the
19 Telecommunications Act to enter into such agreement, file
20 it and gets it approved, the carrier is "is then
21 regulated directly by the Interconnection Agreement."
22 The court went on to conclude that the plaintiff's claim
23 in that case "only described conduct by the defendant
24 that would violate the Interconnection Agreement" and
25 therefore, the plaintiff had no cause of action pursuant

1 to 206 and 207 of the Communications Act which I think I
2 heard you admit you didn't have a claim on this Delta
3 escrow issue under 206 and 207, is that correct?

4 MR. CARTER: Correct. I think that in terms of
5 looking at 206 and 207 of the act which allows you to
6 bring claims against carriers, then the claim for the
7 interpretation of the Interconnection Agreement is not
8 pled based on 206 and 207 but is rather pled as a claim
9 arising under federal law.

10 THE COURT: How does it arise under federal law?

11 MR. CARTER: Certainly. The claim arises under
12 federal law because as Verizon Maryland Two under the
13 Fourth Circuit decision under the Supreme Court ruled in
14 the Verizon Maryland decision, reviewed this issue and
15 they concluded that it arose under federal law because
16 Interconnection Agreements are the manner in which
17 Congress chose to implement the local telecommunications
18 competition requirements and the contract is a mandated
19 agreement that is required by Congress and that it is not
20 analogous to or simply a contract between private
21 parties. Yet because Congress requires Interconnection
22 Agreements and requires the incumbent such as AT&T to
23 open their networks to local competition. That the
24 agreement itself becomes part of and arising out of
25 federal law. And Verizon Maryland concluded, the Fourth

1 Circuit in Verizon Maryland Two decision concluded this.
2 Respectfully we believe it is your opinion in Southern
3 New England Telephone v. Global Naps. Also concluded
4 that to the extent that the Global Naps was raising a
5 breach of Interconnection claim, it was a claim subject
6 to Section 1331 jurisdiction. We also point to in a case
7 that AT&T neither addresses nor distinguishes which is a
8 recent Eastern District of Virginia decision. Most
9 recent decision was issued that we're aware of where that
10 court concluded as well that the Interconnection
11 Agreement is an agreement mandated by federal law and
12 that arises under federal law and sufficient to give the
13 court 1331 jurisdiction over that claim.

14 THE COURT: You have said a lot. Let me now
15 come back. Let me start with the basic principals.
16 Would you agree with me that the a claim for a breach of
17 contract is not a federal claim just because the contract
18 is mandated by federal law?

19 MR. CARTER: I would agree with you --

20 THE COURT: I hope the answer is going to be
21 yes. Otherwise you are going to have to tell me that
22 Empire Health Choice Assurance versus McVeigh as recent
23 as yesterday was reversed by the Supreme Court. I'm
24 quoting the holding of that opinion.

25 MR. CARTER: Certainly, your Honor. Certainly,

1 your Honor. I would say that the Supreme Court has made
2 a variety of decisions about whether a particular
3 contract arises under federal law and, for example --

4 THE COURT: Would that be a yes? Could you
5 answer my question first, then I will permit you a few
6 moments to respond. Five minute responses are counter
7 productive.

8 MR. CARTER: Thank you, your Honor. It is not
9 the case that every contract that is created in
10 conjunction with federal law is a contract that arises
11 under federal law.

12 THE COURT: So you would agree with me the other
13 day when I remanded a case in which plaintiff sued a
14 defendant for not playing the bills that they sent to
15 them and the defendant responded these all contracts
16 arise under Medicare. Put aside the fact he had the well
17 pleaded complaint problem under federal jurisdiction.
18 Even if he brought his own claim that still would not be
19 a federal question just because the underlying obligation
20 arose out of a federal scheme known as Medicare, right?

21 MR. CARTER: I don't disagree with you there,
22 your Honor.

23 THE COURT: Then let's go to Verizon Maryland.
24 Am I mistaken? My understanding in reading of Verizon
25 Maryland was that the facts and the status or posture of

1 that case when it reached the Fourth Circuit was upon
2 review of a state utility commission interpretation of an
3 Interconnection Agreement, am I correct?

4 MR. CARTER: That is correct, your Honor.

5 THE COURT: Isn't that quite a different
6 circumstance than the one we're in right now where you
7 asked me in the first instance to take jurisdiction over
8 contract dispute relating to an agreement approved, in
9 effect created by the DPUC of Connecticut.

10 MR. CARTER: Your Honor, I do agree with you
11 that there is a different situation. But I believe that
12 the important distinction here that we believe is the
13 appropriate analysis is that the determination of whether
14 the court has original jurisdiction under 1331 is a
15 decision that the Supreme Court and the Verizon Maryland
16 Two opinion concludes that the contract is a contract
17 that arises under federal law and that the second level
18 of analysis that is certainly the point that you made, is
19 whether there's an affirmative defense that would deprive
20 the court of jurisdiction because of a failure to exhaust
21 administrative remedies.

22 THE COURT: But I'm still -- I'm still confused.
23 It's easy to say that this is issue arises under federal
24 law. The problem is I can't get my hands wrapped around
25 how your claim for breach of an Interconnection Agreement

1 not relating to a federal tariff but relating to in
2 effect contractual business relationship between the
3 parties on an escrow agreement that isn't required by the
4 federal law, isn't required by the tariffs that are
5 approved under federal law. I'm not saying there might
6 be other issues between the parties that aren't federal
7 jurisdiction but how this dare I say simple contract
8 issue arises under federal law.

9 MR. CARTER: Certainly. Your Honor, as the
10 court in Verizon Maryland Two recognized the payment of
11 intercarrier compensation is a key feature of the
12 Interconnection Agreement process. It is in fact central
13 to that requirement within the Interconnection
14 Agreement.

15 THE COURT: I would agree with you. I wouldn't
16 necessarily disagree with the Fourth Circuit but they
17 also said that not every dispute about the term in the
18 ICA belongs in federal court. Their facts one were an
19 appeal and two -- in other words, those parties had gone
20 to the DPUC already but probably more importantly, I
21 believe their dispute addressed in effect the tariff that
22 had been approved under federal law how would that to be
23 interpreted. Your claim and case doesn't involve the
24 issue of interpreting a tariff.

25 MR. CARTER: Respectfully I would suggest, your

1 Honor, that the escrow provision itself, paragraph 7.3 of
2 the First Amendment it seeks to a calculation, that Delta
3 calculation as it is called, which is a calculation
4 between the rates that in this case the telecom opting
5 into the agreement pays, pursuant to the rates for local
6 traffic and a calculation between that and the rates that
7 would have approved if the rate had been the interstate
8 tariff rate so in order to arrive at the calculation of
9 what the Delta calculation will be is the difference
10 between local rates and interstate tariff rates. The
11 traffic that's subject to this provision, paragraph 7.3
12 is traffic that AT&T contends is long distance interstate
13 traffic. It is traffic that AT&T contends is subject to
14 its interstate tariff and ultimately this issue about
15 what compensation is due. As you are recognize in the
16 first question to Mr. Friedman, your Honor, is how long
17 has the FCC been considering this issue. This issue
18 about what compensation will be due is an issue that will
19 be ultimately decided by the Federal Communications
20 Commission so the provision itself -- you can take a very
21 narrow view of the provision, I would submit, that looks
22 only at the question of what does the escrow provision
23 mean. In order to get the understanding of what the
24 escrow provision intended to do, what the escrow
25 provision is intended to accomplish, requires the parties

1 to look not simply at the Interconnection Agreement but
2 also to look at AT&T's interstate tariff and the
3 interstate tariff we submit is a central part of this
4 analysis and the analysis that's required.

5 THE COURT: You need to take a breath. She
6 needs to the take it done. I need to get a word in
7 edgewise unless you don't think what I'm thinking.

8 MR. CARTER: No, ma'am.

9 THE COURT: That is all very interesting
10 argument but it is beside the point of your complaint.
11 There isn't one word in your complaint that you raise the
12 question that this tariff that AT&T wants to charge which
13 they are not charging is my understanding currently is
14 the wrong one. Indeed your complaint says "The parties
15 have intentionally held their dispute about which rate is
16 appropriate in abeyance. That's your word. And the
17 dispute which you come to court over relates to AT&T's
18 view of whether you should escrow money pending the
19 outcome of the rate dispute. So when I read this
20 complaint, I guess I breath a sigh of relief. I won't
21 ever have to decide what tariff applies under your
22 complaint. I don't how, sir, I will ever be interpreting
23 which transfer applies or what the tariff says. It
24 doesn't seem to be a dispute about what the difference
25 between the two rates is every month. The dispute is

1 over do you count them by month only and wipe the slate
2 clean or do you add up the months one after another
3 cumulatively. Do you count all 13 together or do you
4 count one together? In that long explanation I just gave
5 of what I read your complaint as never once did I say the
6 federal tariff word. The federal tariff is not an issue.
7 That's quite distinct from the Fourth Circuit Verizon
8 Maryland case. Besides which the posture of the case was
9 in a different posture. In terms of the Fourth Circuit
10 statement, yes, here there was a federal issue, my
11 reading of that opinion is yes because they had to dig
12 into the tariff issue. Much as I did in the Global Naps
13 case in one of the decisions I made but your complaint
14 isn't that complaint. Your complaint is we entered into
15 effect a contract. We have a dispute about one of the
16 provisions of that contract which is required to be an
17 interconnect agreement. Isn't related to the tariff.
18 The interpretation of the tariff in any way. It is
19 related to the word we picked Delta in the agreement. So
20 I don't see how the Fourth Circuit case helps you.

21 MR. CARTER: Your Honor, I don't want to argue
22 with your interpretation of the Fourth Circuit opinion.
23 I will only add that it is my reading of the Fourth
24 Circuit opinion that they took a broader view of disputes
25 and nature between the parties and that view in the

1 holding of the central tenet of what they included is
2 there is a payment of intercarrier compensation is a
3 sufficient federal question to establish federal question
4 jurisdiction. I believe that the escrow provision in our
5 agreement speaks directly to the requirements to make
6 intercarrier compensation payments.

7 THE COURT: Okay. You rely on my decision in
8 the Global Naps case and the issue of subject matter
9 jurisdiction which I decided I did have jurisdiction in
10 that case, despite the defendant's motion to dismiss on
11 the theory that it was a mere interconnection agreement
12 and therefore there was no federal jurisdiction much like
13 AT&T argues here but my understanding of the circuit's
14 affirmance of me on that decision is they concluded I did
15 have federal jurisdiction, not unlike the Fourth Circuit.
16 While the dispute was about an interconnection agreement
17 that isn't what gave me jurisdiction because on the face
18 of the well-pleaded complaint rule, there was put at
19 issue a tariff question and given it was an FCC tariff
20 that did arise under federal law the FTCA and therefore,
21 1331 jurisdiction flowed from 1337 but again I don't see
22 anything in your complaint that raises a dispute about --
23 well pleaded dispute about a tariff.

24 MR. CARTER: I don't disagree with you with your
25 conclusions about the reasons the Second Circuit

1 ultimately held your determination in the SNET v. Global
2 Naps case. I respectfully submit, however, that what I
3 interpret to be your reasoning, the reasoning that you applied
4 in your conclusion that the Interconnection
5 Agreement itself gave rise to a 1331 jurisdiction is the
6 appropriate analysis and the same analysis that we ask
7 you to apply here today. It is also the analysis that
8 the Eastern District of Virginia in the Central Telephone
9 case we cited applied very recently. That is that that
10 court concluded that the breach of the Interconnection
11 Agreement itself gave rise to our allegation regarding
12 the interpretation breached in their interconnection
13 agreement itself gave rise to 1331 jurisdiction. I think
14 that case is particularly on point here today because it
15 was in fact a disagreement between parties about whether
16 traffic was subject to intercarrier compensation payment
17 and what the appropriate payments were for that traffic
18 and so the court there concluded that as I read the
19 opinion, the court concluded that there's jurisdiction
20 over claims involving the interpretation or enforcement
21 of interconnection agreement and there's not a
22 requirement to exhaust administrative remedies in the
23 various Public Utility Commission.

24 THE COURT: I thought in the Eastern District
25 decision. I was trying to refresh my memory. It is

1 Judge Payne. I'm not familiar with Judge Payne. In his
2 opinion and I may be wrong and apologize. You correct me
3 if I'm mistaken. I thought the context of that dispute
4 while it was a claimed breach of contract related to I
5 think it was Sprint's position that they didn't have to
6 pay a federal tariff which was not unlike Global Naps in
7 my SNET case whose position was basically we're connected
8 to SNET but we don't owe them any money. SNET alleged
9 yes, you do. You have to pay this federal tariff. You
10 are within the zone of the type of services covered by
11 the tariff. I don't know that the Virginia District
12 Court's decision, the Eastern District of Virginia, Judge
13 Pain's decision is really any different than any Global
14 Naps. I read a lot of cases and could have forgot the
15 fact. Tell me if I'm wrong if that case is more like
16 this one. ICA. There's a term in the ICA that the
17 parties dispute and it doesn't relate to the tariff. And
18 you want to sue off that dispute.

19 MR. CARTER: Certainly, your Honor.

20 It is my understanding that the Interconnection
21 Agreement that the Central Telephone case does involve
22 the interpretation of the Interconnection Agreement.
23 That Interconnection Agreement spoke specifically in the
24 way that our Interconnection Agreement does about what
25 should happen to VOIP or IPPS traffic in the compensation

1 that should be due there. So I would say that that is my
2 understanding that that agreement, the Interconnection
3 Agreement, did as you might suggest, incorporate by
4 reference, provisions of the tariff that was at issue but
5 that really the court's finding, the holding of that
6 opinion, is that it was interpreting an Interconnection
7 Agreement and that it had authority jurisdiction to do so
8 pursuant to 1331.

9 THE COURT: All right. I'm just reading from
10 the judge's opinion at *776 of whatever printout I have
11 here. I guess it is Central Telephone. It is a West Law
12 print. The citation actually public opinion 759 F.Supp
13 2d, 772. This is the published page 776. There the
14 Court is reciting the factual background. It says "in
15 June '09, Sprint altered court and for the first time
16 since the effective date of any ICA lodged a series of
17 disputes over VOIP originated traffic contending the
18 ICA's did not make Sprint liable to pay the charges re:
19 tariff for this traffic. To me that sounds like the
20 Global Naps people in the SNET case which as I said, the
21 circuit in my view said yes, Hall, you are right. You
22 had jurisdiction. Even though it involved an ICA, the
23 dispute could only be resolved by interpreting a federal
24 tariff and its applicability. I suggest to you that I
25 don't have that in this case. You can point to me

1 something in your complaint a interpretation of a tariff
2 is at issue, but I don't think you have that.

3 MR. CARTER: No. Your Honor, I wouldn't suggest
4 that to reach the resolution of the escrow provision, you
5 have to interpret our tariff.

6 I would for another moment focus on the Central
7 Telephone case. I believe that the language that you
8 read the central part of the facts was that the
9 resolution of the dispute was a resolution of the dispute
10 that would turn not on the interpretation of the tariff
11 but on the interpretation of the plain language of the
12 Interconnection Agreement. So I understand that --

13 THE COURT: Which case? You think that's
14 Central?

15 MR. CARTER: Central Telephone. I believe it
16 turns -- the interpretation of the judge's ultimate
17 determination when it awarded judgment to Central
18 Telephone Company in that case. It did it based on the
19 language of the Interconnection Agreement. It didn't
20 conclude that the tariff expressly provided for the
21 payment of the intercarrier compensation for VOIP traffic
22 rather it concluded that the Interconnection Agreement.
23 The negotiated Interconnection Agreement between the
24 parties was what gave rise to the requirements to make
25 intercarrier compensation payments. I think that is

1 analogous to our situation here. The payments that we
2 are talking about that are required -- that AT&T contends
3 we must pay and that Infotelecom contends it already paid
4 a sufficient amount of money are requirements that are
5 directly impacted by and directly related to intercarrier
6 compensation payments. I admit that we are not asking
7 you to interpret the federal tariff to reach that.

8 THE COURT: You haven't alleged that AT&T is
9 insisting that you pay -- I assume it is the higher
10 tariff they would want the FCC to say applies.

11 MR. CARTER: Certainly AT&T submits invoices to
12 us on a monthly basis that are invoices that are their
13 view that the tariff traffic applies in this case. And
14 that it is from those invoices that reflect the tariff
15 payments that we calculate the monthly --

16 THE COURT: The bill. The ICA that you entered
17 into, are tagged on with the level three ICA, provides,
18 does it not by its terms, that AT&T has agreed to
19 forebear from collecting those higher tariffs so long as
20 you don't violate the ICA, one of which provision is the
21 Delta escrow issue, right?

22 MR. CARTER: As long as we make the payment of
23 the local.

24 THE COURT: The payment you agree to pay?

25 MR. CARTER: Correct.